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Message Text

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INFO OCT-01 EUR-12 ISO-00 CAB-05 CIAE-00 COME-00 DODE-00

DOTE-00 EB-07 INR-07 NSAE-00 FAA-00 IO-10 OIC-02

TRSE-00 SS-15 NSC-05 AF-06 ARA-10 EA-10 NEA-09 /101 W
---------- 012641
R 231529Z APR 75
FM AMCONSUL MONTREAL
TO SECSTATE WASHDC 6211

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DEPT PASS DRISCOLL/DOT; STEWART/FAA; JACKLIN/TREASURY; HEYE/CAB

FROM USREP ICAO

E. O. 11652: N/A
TAGS: PORG, EAIR, ICAO
SUBJ: ICAO - LEGAL SUBCOMMITTEE, DISCUSSIONS/NOISE AND SONIC BOOM

REF: MONTREAL 0674

SUMMARY: AS INDICATED REFTEL, FOLLOWING IS PRECIS OF GENERAL STATEMENTS ON NEW INSTRUMENT ON NOISE AND SONIC BOOM.

1. IATA. REFERENCING WORKING DRAFT 847-2 SUBMITTED AT LEGAL COMMITTEE IATA CALLED FOR EXONERATION OF CARRIERS FROM LIABILITY FOR DAMAGE CAUSED BY NOISE OR SONIC BOOM UNLESS APPLICABLE REGULATIONS ARE VIOLATED. THE APPLICABLE REGULATIONS MEANS THOSE WHICH ARE AGREED INTERNATIONAL STANDARDS SET FORTH IN ICAO ANNEXES. CARRIERS WOULD BE ABSOLUTELY LIABLE, PERHAPS WITHOUT LIMITATION AS TO AMOUNT, IF THEY VIOLATE THESE STANDARDS. DEFENSES TO CARRIERS WOULD BE LIMITED TO TWO:

WHERE DEPARTURE FROM STANDARDS WAS FOR SAFETY REASONS OR DUE TO FAULT OF GROUND CONTROLLERS.

NO CARRIER LIABILITY FOR TRESPASS, NUISANCE OR INVERSE CON-
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DEMNATION. AIRPORT OPERATORS SHOULD ALSO BE EXONERATED FROM

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LIABILITY ON SAME PRINCIPLES.

2. NETHERLANDS - REGRETTED LEGAL COMMITTEE DECISION TO HAVE NOISE AND SONIC BOOM CONVENTION. SUBJECT IS A TECHNICAL MATTER FOR SOLUTION BY MANUFACTURERS AND BY ZONING ACTIONS. AGREED WITH JAPANESE PROPOSAL CONTAINED IN WD/20 THAT ANY CONVENTION SHOULD BE LIMITED TO LIABILITY FOR "IMPACT" DAMAGE AND SHOULD BE ON STRICT LIABILITY BASIS, WITH LIABILITY FOR "CUMULATIVE" DAMAGE LEFT TO NATIONAL LAW. AIRPORT OPERATORS SHOULD NOT BE EXONERATED, ON BASIS THEY HAVE RESPONSIBILITY TO LOCATE AIRPORTS IN MANNER TO AVOID NOISE DAMAGE.

3. NORWAY - APPEARED TO AGREE BASICALLY WITH IATA. DID NOT THINK AIRPORTS SHOULD BE IMMUNE ON THE SAME BASIS AS AIRCRAFT OPERATORS. LIABILITY SHOULD BE PLACED ON AIRPORTS, IF ON ANYONE, ALTHOUGH THIS DETERMINATION FALLS OUTSIDE SUBCOMMITTEE'S TERMS OF REFERENCE. NOTE IN INFORMAL DISCUSSION LATER, NORWEGIAN REP INDICATED WE MISINTERPRETED HIS POSITION, BUT HE DID NOT ELABORATE.

4. ARGENTINA - SAID THERE WAS A NEED FOR AN INTERNATIONAL CONVENTION ON NOISE, SONIC BOOM AND VIBRATIONS, BASED ON INTERNATIONAL STANDARDS. TO LEAVE THE QUESTION TO LOCAL LAW WOULD ENCROACH ON ICAO EFFORTS TO CREATE UNIFORM RULES. ANNEX 16 PROVIDES SUFFICIENT BASIS FOR ESTABLISHING LIABILITY. CONVENTION SHOULD PROVIDE FOR ABSOLUTE BUT LIMITED LIABILITY; AND CREATE RULES ON WHO IS LIABLE - AIRCRAFT OPERATOR, AIRPORT OPERATOR, OR STATE. WOULD HAVE PREFERRED COVERING SUBJECT IN ROME CONVENTION BUT RECOGNIZED LEGAL COMMITTEE DECIDED OTHERWISE.

5. JAPAN - AGREED IT WAS PREMATURE TO DEVELOP A CONVENTION ON NOISE AND SONIC BOOM IN LIGHT OF MANY AMBIGIOUS PROBLEMS. IF ATTEMPT TO DO SO CONVENTION SHOULD BE LIMITED TO LIABILITY FOR "IMPACT" DAMAGE, WITH "CUMULATIVE" DAMAGE LIABILITY GOVERNED BY NATIONAL LAW. SEE WD/20 SUBMITTED BY JAPAN.

6. UNITED KINGDOM - COULD NOT ACCEPT IATA PROPOSAL ON ONE POINT. CARRIER MUST BE LIABLE FOR PHYSICAL DAMAGES FROM NOISE AND VIBRATION, WITHOUT LIABILITY LIMIT, EVEN IF REGULATIONS ARE FOLLOWED. ALSO, IN PHYSICAL DAMAGE CASES ARGUED THERE SHOULD
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BE NO LIMITATION ON AVAILABLE FORUM FOR BRINGING AN ACTION. FOR DAMAGES "NOT OF A PHYSICAL CHARACTER" UK WOULD EXONERATE CARRIER WHEN IT COMPLIED WITH ALL REGULATIONS, NOT JUST AIR TRAFFIC REGULATIONS. ARGUED THERE SHOULD BE NO DISTINCTION IN TREATMENT OF DAMAGE CAUSED BY NOISE AND DAMAGE CAUSED BY SONIC BOOM. UK PROPOSAL WAS SUBMITTED AS AN ALTERNATIVE TEXT, WD/26.

7. FRANCE - AGREED WITH LEGAL COMMITTEE AND CHAIRMAN'S DRAFT

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(WD/23) CONCEPTS THAT CARRIER SHOULD NOT BE LIABLE FOR PHYSICAL DAMAGE FROM NOISE WHEN IT COMPLIED WITH REGULATIONS, BUT SHOULD BE LIABLE FOR SONIC BOOM PHYSICAL DAMAGE IN ALL CASES, WHETHER OR NOT IN COMPLIANCE WITH ALL REGULATIONS. RAISED QUESTION WHETHER DISTINCTIONS COULD ALWAYS BE MADE BETWEEN PHYSICAL AND NON PHYSICAL DAMAGE.

8. AIRPORT ASSOCIATION COORDINATING COUNCIL - TECHNICAL PROBLEMS MUST BE RESOLVED BETWEEN AIRLINES AND MANUFACTURERS. TO EXONERATE CARRIERS WOULD PLACE LIABILITY ON AIRPORT OPERATOR WHO IS THE LEAST ABLE TO REMEDY PROBLEM. AIRPORT OPERATORS IN ANY EVENT WOULD RECOUP LOSSES FROM AIR CARRIERS, BUT ECONOMIC INCENTIVE TO DEVELOP TECHNICAL SOLUTIONS WOULD BE LOST.

9. ITALY - COULD ACCEPT PRINCIPLE OF CARRIER EXONERATION IF REGULATIONS ARE FOLLOWED.

10. UNITED STATES - THERE ARE MANY QUESTIONS RAISED, BUT INSUFFICIENT INFORMATION TO FORMULATE ANSWERS. LAW IS ONLY NOW DEVELOPING. SUBCOMMITTEE SHOULD NOT ATTEMPT TO DEVELOP INTERNATIONAL TREATY BEFORE THE PROBLEM IT IS DESIGNED TO SOLVE IS DEFINED. SUBCOMMITTEE SHOULD COLLECT INFORMATION FROM STATES ON LITIGATION RESULTS -- WHERE BURDEN OF LIABILITY IS FALLING, IMPACT OF INSURANCE COSTS, AND LEVELS OF RECOVERIES TO DETERMINE IF A PROBLEM EXISTS, BEFORE PROCEEDING TO CONSIDER DRAFT LANGUAGE.
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ACTION L-02

INFO OCT-01 EUR-12 ISO-00 CAB-05 CIAE-00 COME-00 DODE-00

DOTE-00 EB-07 INR-07 NSAE-00 FAA-00 IO-10 OIC-02

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11. USSR - CONVENTION SHOULD EXONERATE CARRIER IF IN COMPLIANCE WITH STANDARDS FORMULATED BY ICAO. THERE IS NO REASON TO DRAW DISTINCTION IN THIS RESPECT BETWEEN NOISE AND SONIC BOOM. PROPOSED ALTERNATIVE TEXT TO THIS EFFECT (WD/27) - LIABILITY SHOULD BE LIMITED AND ONLY FOR DIRECT PHYSICAL DAMAGE CAUSED BY NOISE OR SONIC BOOM. OPERATOR SHOULD NOT BE LIABLE IF DAMAGE DUE TO MERE FACT OF FLIGHT. FELT GUIDANCE FROM SONIC BOOM COMMITTEE WOULD BE HELPFUL.

12. CANADA - SIMILAR TO US POSITION ADDED THAT IF A NEW INSTRUMENT REFERRED TO NATIONAL STANDARDS, IT WOULD NOT BE VERY DESIRABLE FOR INSURANCE PURPOSES BECAUSE OF THE GREAT VARIANCE IN STANDARDS.

13. BELGIUM - DID NOT FEEL IT WAS NECESSARY TO WAIT TO HEAR WHAT SITUATION IS ON TECHNICAL MATTERS AS IN TERMS OF JURESPRUDENCE. FELT THERE WAS A BASIC USEFULNESS IN SAYING THAT CARRIERS ARE NOT LIABLE IF THEY COMPLY WITH APPLICABLE REGULATIONS AND A TEXT PROMPTLY PRODUCED TO THIS EFFECT WOULD BE APPROPRIATE SUBCOMMITTEE RESPONSE TO LEGAL COMMITTEE MANDATE. HAD CERTAIN RESERVATIONS ON IATA PROPOSAL AND SUGGESTED PERHAPS STATES SHOULD BE LIABLE SINCE THEY SPECIFY WHICH AIRPORT SHOULD BE USED AND WHERE IT IS LOCATED.

14. FED REP/GERMANY - SHARES U.S. CANADIAN POSITION.

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CONCLUSION: AT THIS EARLY DATE NO CLEAR CONSENSUS IS FORMULATING FOR ANY PARTICULAR PRINCIPLES TO BE INCORPORATED IN A TREATY, ALTHOUGH A SLIGHT MAJORITY SEEM TO FAVOR DEVELOPING A TREATY RATHER THAN LEAVING SUBJECT MATTER ENTIRELY TO NATIONAL LAW. DIVISION OF VIEWS ON SUBJECTS SUCH AS WHETHER DISTINCTIONS SHOULD BE DRAWN BETWEEN DAMAGE FROM NOISE AND FROM SONIC BOOM, COVERAGE OF VIBRATION DAMAGE, DIFFERENCES BETWEEN CUMULATIVE AND IMPACT DAMAGE AND BETWEEN PHYSICAL AND NON PHYSICAL DAMAGE, WHETHER APPLICABLE REGULATIONS ARE LIMITED TO ICAO INTERNATIONAL STANDARDS OR SHOULD INCLUDE LOCAL AND FEDERAL RULES AND WHETHER AIRPORT OPERATORS LIABILITY AS WELL AS CARRIERS LIABILITY SHOULD BE COVERED, PROMISE PROTRACTED AND COMPLICATED DISCUSSIONS IN THIS SUBJECT IN FUTURE YEARS, WITH UNPREDICTABLE RESULTS AT THIS STAGE. MANY DELEGATES DID NOT SEEM TO HAVE CLEARLY IN MIND EVEN THE PARTICULAR CONCEPTS THEY WERE ADVANCING. IT SEEMS CLEAR A SUBSTANTIAL AMOUND OF ICAO TECHNICAL INPUT WILL BE REQUIRED IF AND WHEN PROCEEDINGS CONTINUE IN SUBCOMMITTEE/LEGAL COMMITTEE.
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